STATE OF MICHIGAN

COURT OF APPEALS

MELVIN RHINEHART,

Petitioner-Appellant,

and

ADDIE RHINEHART,[1]

Petitioner,

v

CITY OF DETROIT,

Respondent-Appellee.

UNPUBLISHED
April 10, 2014

No. 313511
Tax Tribunal
LC No. 00-426570

Before: WILDER, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

Petitioner appeals by right a judgment of the Michigan Tax Tribunal (MTT) establishing the state equalized value (SEV), true cash value (TCV), and taxable value (TV) of real property located in the city of Detroit for the 2011 and 2012 tax years. On appeal, petitioner asserts as error the MTT's failure to award a tax refund for excessive taxes paid during the 2008, 2009, and 2010 tax years. We affirm.

In June 2008, petitioner purchased on EBay the subject residential property located at 14918 E. State Fair Street in Detroit for $5,499. Petitioner did not submit the property transfer affidavit until May 29, 2009. Petitioner then protested the assessment value of the subject property for the 2008, 2009, 2010, and 2011 tax years to the 2011 March board of review. The March Board of Review corrected the 2011 and 2012 assessment rolls and declined to address the 2008, 2009, and 2010 tax years. Petitioner appealed Board of Review's determination regarding the SEV, TCV, and TV of the subject property to the MTT, challenging the board's refusal to adjust the property's assessed valuation for the 2008, 2009, and 2010 tax years. The MTT concluded that it had no authority over petitioner's appeal for the 2008, 2009, and 2010 tax

[1] Addie Rhinehart was a petitioner in the lower court; however, she is not a party to this appeal.

years because petitioner did not protest those assessments to the March board of review and file an appeal by July 31 of the tax year involved. Moreover, the MTT ruled that it had no authority over the assessment because no clerical error or mutual mistake of fact occurred.

Absent fraud, this Court's review of a MTT decision is limited to determining whether the MTT made an error of law or adopted a wrong legal principle. Const 1963, art 6, § 28; *Meijer, Inc v City of Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). The MTT's factual findings are upheld unless they are not supported by competent, material, and substantial evidence. *Id*. The MTT's failure to base its decision on competent, material, and substantial evidence is an error of law requiring reversal. *Id*. Substantial evidence is any evidence that reasonable minds would accept as sufficient to support the MTT's decision; it is more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *In re Grant*, 250 Mich App 13, 18-19; 645 NW2d 79 (2002); *Meijer, Inc*, 240 Mich App at 5.

Petitioner first contends that the Board of Review was authorized to award him a tax refund for the 2008, 2009, and 2010 tax years due to errors and mistakes in the valuation of the subject property, and the MTT erred in failing to award him a tax refund for excessive taxes paid during these tax years. We disagree.

Our Supreme Court, in *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518, 532-533, 541; 817 NW2d 548 (2012), held that the March board of review and MTT are authorized and required, pursuant to MCL 211.29 and MCL 211.30, to correct errors in the valuation of a property to bring taxable values into compliance with the General Property Tax Act (GPTA). The Court also held that its decision "is limited to adjusting a current year's taxable value to prevent previous errors from running in perpetuity against the current taxpayer," and has no effect on actions to collect or receive a refund of a previous year's taxes or altering a previous year's tax roll. *Id.* at 533. Here, petitioner is not challenging the board of review's and MTT's failure to correct errors in the valuation of a property to bring taxable values in compliance with the GPTA. Instead, petitioner seeks to recover excess taxes paid on the subject property for the 2008, 2009, and 2010 tax years. Although petitioner did protest the excess taxes paid in the 2008, 2009, and 2010 tax years to the March Board of Review, he did not do so until 2011, and absent a statute providing for recovery of these excess taxes paid, the MTT was not required to award petitioner a tax refund.

Petitioner contends that he was entitled to recover the excess taxes paid on the subject property under MCL 211.53a, which provides:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a *clerical error or mutual mistake of fact made by the assessing officer and the taxpayer* may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest. [Emphasis added.]

A "mutual mistake of fact" under this statute is "'an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.'" *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 77; 780 NW2d 753 (2010), quoting *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006). Before 2006, the same phrase of "clerical error or mutual mistake of fact" was also addressed in MCL 211.53b, so it is in *pari materia* with MCL 211.53a. *Wolverine Steel Co v Detroit*, 45 Mich App 671, 674; 207 NW2d 194 (1973). Consequently, case law interpreting the same phrase in one section is helpful interpreting the other. *Id.* This Court has held that a "clerical error" under MCL 211.53b, is limited to "errors of a typographical, transpositional, or mathematical nature." *Int'l Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104, 109; 548 NW2d 668 (1996).

Petitioner contends that he sent a notarized deed to the Wayne County Register of Deeds and was unaware of any other registration requirements. He asserts that his mistake in failing to register the subject property with the assessing officer within 45 days of the transfer in ownership, and error on the part of the assessing officer in failing to check with the register of deeds on a monthly basis, allows recovery of a tax refund for the 2008, 2009, and 2010 tax years. MCL 211.27a(10) governs the notice of transfer of property, and provides, in pertinent part:

> The *register of deeds of the county where deeds or other title documents are recorded shall notify the assessing officer* of the appropriate local taxing unit not less than once each month of any recorded transaction involving the ownership of property and shall make any recorded deeds or other title documents available to that county's tax or equalization department. Unless notification is provided under subsection (6), the *buyer, grantee, or other transferee of the property shall notify the appropriate assessing office* in the local unit of government in which the property is located of the transfer of ownership of the property within 45 days of the transfer of ownership, on a form prescribed by the state tax commission that states the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the property's parcel identification number or legal description. [Emphasis added.]

In the instant case, no mutual mistake of fact or clerical error occurred. As our Supreme Court noted, a "mutual mistake of fact" is an erroneous belief "shared and relied on" by the taxpayer and assessing officer. *Briggs Tax Serv, LLC*, 485 Mich at 77. No such mutuality exists here. Clearly, the language of MCL 211.27a(10) places an affirmative duty on the buyer of the property and the register of deeds. The buyer is required to notify the assessing officer of the property transfer, and the register of deeds is required to notify the assessing officer each month of any recorded transactions involving ownership of the property. The assessing officer had no duty under this statute; no mutual mistake of fact occurred. Additionally, there were no errors of a "typographical, transpositional, or mathematical nature," *Int'l Place Apartments-IV*, 216 Mich App at 109, to provide a basis for relief under MCL 211.53a.

Petitioner also asserts relief may be granted under MCL 211.53b, which provides, in relevant part:

> (1) *If there has been a qualified error, the qualified error shall be verified by the local assessing officer and approved by the board of review.* Except as otherwise provided in subsection (9), the board of review shall meet for the purposes of this section on Tuesday following the second Monday in December and on Tuesday following the third Monday in July. If approved, the board of review shall file an affidavit within 30 days relative to the qualified error with the proper officials and

> all affected official records shall be corrected. *If the qualified error results in an overpayment or underpayment, the rebate, including any interest paid, shall be made to the taxpayer or the taxpayer shall be notified and payment made within 30 days of the notice*. A rebate shall be without interest. The treasurer in possession of the appropriate tax roll may deduct the rebate from the appropriate tax collecting unit's subsequent distribution of taxes. The treasurer in possession of the appropriate tax roll shall bill to the appropriate tax collecting unit the tax collecting unit's share of taxes rebated. *Except as otherwise provided in subsections (6) and (8) and section 27a(4), a correction under this subsection may be made for the current year and the immediately preceding year only*.
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> * * *
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> (10) As used in this section, "qualified error" means 1 or more of the following:
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> (a) A clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes.
>
> (b) A mutual mistake of fact. [Emphasis added.]

The plain language of the statute allows for recovery of a tax refund if petitioner can prove that a "qualified error"—a "clerical error" or "mutual mistake of fact" occurred. However, for the reasons discussed already, neither a mutual mistake of fact nor a clerical error occurred in this case. Thus, petitioner is not entitled to relief under this statute.

Petitioner also contends that he is entitled to a tax refund under MCL 211.27a(4), which provides in part:

> If the taxable value of property is adjusted [because of a transfer of ownership] . . . and the assessor determines that there had not been a transfer of ownership, the taxable value of the property shall be adjusted at the July or December board of review. Notwithstanding the limitation provided in section 53b(1) on the number of years for which a correction may be made, the July or December board of review may adjust the taxable value of property under this subsection for the current year and for the 3 immediately preceding calendar years.

This statute plainly provides for the retroactive correction of an adjustment to taxable value based on what was believed to be a transfer of ownership but the assessor later "determines that there had not been a transfer of ownership." In this case, the exact opposite occurred. A transfer of ownership occurred but there was no adjustment of taxable value. Consequently, this statute is inapplicable, and petitioner is not entitled to a tax refund.

Petitioner next contends that the MTT erred in its valuation of the subject property for the 2011 and 2012 tax years. We disagree.

Our Constitution governs the assessment of real property. Const 1963, art 9, §3 provides, in pertinent part:

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments.

The "true cash value" of property is synonymous with the "fair market value" of the property. *Huron Ridge, LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007). "True cash value" is defined as follows:

> the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. [MCL 211.27(1).]

The burden of establishing the "true cash value" is on a petitioner. MCL 205.737(3). The three most common approaches to valuation are the capitalization of income approach, the sales-comparison approach, and the cost-less-depreciation approach. *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 390; 576 NW2d 667 (1998). The MTT is not bound to accept either party's theory of valuation, and has a duty to make an independent determination of true cash value. *Id.* at 390-391. More specifically, the MTT is duty bound to "apply its expertise to the facts of a case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). Further, whatever approach the MTT selects, the value determined must represent the usual price for which the subject property would sell. *Id.*; MCL 211.27(1).

Petitioner asserts that the MTT arbitrarily selected sales comparable number one, and it should have selected sales comparable number three because it was more closely related to the subject property. "The sales-comparison approach indicates true cash value by analyzing recent sales of similar properties, comparing them with the subject property, and adjusting the sales price of the comparable properties to reflect differences between the two properties." *Meadowlanes Ltd Dividend Hous Ass'n v City of Holland*, 437 Mich 473, 485 n 19; 473 NW2d 636 (1991). The MTT concluded that sales comparable number one was similar in age, size, utility, location, and sold closest in time to the appraisal date of the subject property.

The MTT's conclusions were supported by competent and substantial evidence. Const 1963, art 6, § 28. The appraisal petitioner offered valued the subject property at $7,500, as of September 30, 2010, which was calculated using the sales comparison approach. Comparable number one had the following characteristics: (1) 1,706 square feet; (2) three bedrooms and one and a half bathrooms with an unfinished basement; (3) two car detached garage; (4) located .08 miles from the subject property; (5) built in 1930, and (6) sold for $13,000 on September 20, 2010, adjusted to $11,128 by petitioner's appraiser. Comparable number three had the following characteristics: (1) 1,405 square feet; (2) three bedrooms and one bathroom with an unfinished basement; (3) two car detached garage; (4) located .05 miles from the subject property; (5) built in 1938; and (6) sold for $6,000 on March 17, 2010, adjusted to $6,411 by petitioner's appraiser.

The subject property had the following characteristics: (1) 1,563 square feet; (2) three bedrooms and one bathroom with an unfinished basement; (3) two car detached garage; and (4) built in 1929. Given that the MTT has a duty to make an independent determination of the true cash value, and reasonable minds would accept the evidence presented to support the MTT's selection of comparable number one, the MTT did not err in its valuation of the subject property with respect to the 2011 tax year. Moreover, petitioner only submitted an appraisal for the 2011 tax year, and respondent provided testimony regarding a nine percent value loss from 2011 to 2012 in the subject property's neighborhood. Therefore, the MTT's valuation of the subject property in the 2012 tax year was also supported by competent, material, and substantial evidence.

We affirm.

/s/ Kurtis T. Wilder
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey